

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LA MAR GUNN,	§
	§ No. 742, 2010
Intervenor Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
U.S. BANK NATIONAL	§ C.A. No. 02L-07-075
ASSOCIATION,	§
	§
Plaintiff Below-	§
Appellee.	§

Submitted: April 5, 2011
Decided: May 26, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 26th day of May 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The intervenor-appellant, La Mar Gunn, filed an appeal from the Superior Court's November 12, 2010 order granting a writ of possession to the plaintiff-appellee, U.S. Bank National Association (the "Association"). The Association has filed a motion to affirm on the ground

that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record reflects that, on January 30, 2009, the Superior Court granted Gunn’s motion to intervene with respect to a sheriff’s sale of residential property located at 201 Cornwell Drive, Bear, Delaware (the “property”). The Association had purchased the property at sheriff’s sale on December 9, 2008. Gunn, who claimed an ownership interest in the property, also requested the Superior Court to set aside the sheriff’s sale on the grounds that the Association did not have standing to bring the foreclosure action and was not the bona fide assignee of the property. The Superior Court denied Gunn’s request and Gunn appealed to this Court.

(3) On December 1, 2009, the Court issued an Order remanding the matter to the Superior Court so that Gunn could conduct discovery concerning the assignment to the Association. On February 25, 2010, the Superior Court issued its decision on remand. Noting that Gunn had failed to conduct any discovery on the contested issue, the Superior Court again concluded that the Association was the bona fide assignee and determined that the sheriff’s sale should not be set aside. By Order dated June 30, 2010, this Court affirmed.

¹ Supr. Ct. R. 25(a).

(4) On November 12, 2010, the Superior Court granted the Association a writ of possession allowing it to take possession of the property. Gunn filed the instant appeal on several grounds that may fairly be summarized as follows: a) the Association did not have standing to bring the foreclosure action, which led to the granting of the writ of possession; b) the Association is not the bona fide assignee of the property; and c) the Superior Court abused its discretion when it granted the writ of possession.

(5) In its motion to affirm, the Association argues that the same claims were unsuccessfully raised by Gunn in *Gunn v. U.S. Bank National Association*, Del. Supr., No. 102, 2009, Ridgely, J. (June 30, 2010) and that, therefore, those claims are barred in this proceeding.

(6) A review of that decision as well as this Court's earlier decision in *Gunn v. U.S. Bank National Association*, Del. Supr., No. 102, 2009, Ridgely, J. (December 1, 2009), which remanded the matter to the Superior Court to permit Gunn to conduct discovery, reflects that the issues raised by Gunn in this appeal were unsuccessfully raised by him in that prior appeal. The "law of the case" doctrine, which is well-established in Delaware law, bars re-litigation of any claim that has been previously decided by this Court in the same proceeding.² As such, the prior decisions of this Court regarding

² *Brittingham v. State*, 705 A.2d 577, 579 (Del. 1998).

any claim by Gunn became the “law of the case” in all subsequent stages of the litigation.³ We, therefore, conclude that Gunn’s current claims are barred in this proceeding by the “law of the case” doctrine.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

³ *Id.*